IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9948 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAMMAD YUSUF MAHAMMAD AIYUB KAJI

Versus

COMMISSIOENR OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 9948 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad city on 16.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration two types of materials in passing the order. Firstly, registration of crime against the petitioner on 12.6.2003 under sec.66(B), 65(A)(E) and 81, of the Bombay Prohibition Act. In addition to this, the detaining authority also relied upon in-camera statements as recorded by the sponsoring authority on 12.6.2003 and verified by the detaining authority on 14.6.2003 revealing unreported incidents occurred on 6.5.2003 and 29.5.2003. From the above material, the detaining authority passed the order of detention against the petitioner which is impugned in this petition.

Ld. advocate Mr. Kamen Shukla for Mr AS Dave for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record, is also taken into consideration.

Out of various grounds raised on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, it appears that this matter can be considered and decided on sole ground whether there is non-application of mind by the detaining authority as to the vital aspect of the matter in passing the order of detention. The grounds served upon the petitioner undisputedly discloses that the petitioner was on police remand when the order of detention came to be passed and served upon the petitioner. In this respect, however, the detaining authority reached to the subjective satisfaction that on police remand being over, the petitioner was likely to move an application for bail and was likely to be released on bail. It was also further observed by the detaining authority that on so releasing on bail, the petitioner was likely to continue his illegal activities. To evaluate the contention raised on behalf of the petitioner, the grounds placed on record required to be scrutinised. True, it is that there is no bar in passing the order even when the detenu is in judicial custody but when such situation arises, the detaining authority so as to reach to the reasonable subjective satisfaction about passing of the order must rely on the material placed before him. On going through the grounds placed on record, it is nowhere found that

any material was placed before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail and when this being vital aspect and when the subjective satisfaction is based on no material, the order of detention passed becomes bad in law due to non-application of mind by the detaining authority to the vital aspects of the matter. The facts of this case are squarely covered by a decision of the Apex court in the matter of Amrutlal and others vs. Union Government, through Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. Consequently, the order impugned becomes bad in law because there was no material before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail. The order impugned, therefore, required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 16.6.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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